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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STAR FABRICS, INC.) Case No. 2:15-CV-05075-DSF-RAO
a California Corporation,)
Plaintiff,) DEFENDANTS MACKSON, INC.'S,
) ZULILY, LLC'S AND
vs.) BURLINGTON COAT FACTORY
) DIRECT CORP.'S ANSWER TO
MACKSON, INC., a New York) FIRST AMENDED COMPLAINT OF
Corporation; ZULILY, INC., a) STAR FABRICS, INC.
Delaware Corporation; BURLINGTON)
COAT FACTORY DIRECT CORP., a)
Delaware Corporation; ROSS)
STORES, INC., a Delaware)
Corporation; and DOES 1 through 10,)
Defendants.)

Defendants, Mackson, Inc. ("Mackson"), Zulily, LLC ("Zulily") and
Burlington Coat Factory Direct Corp. ("Burlington") (collectively hereinafter
DEFENDANTS MACKSON, INC.'S, ZULILY, LLC'S AND BURLINGTON COAT
FACTORY DIRECT CORP.'S ANSWER TO FIRST AMENDED COMPLAINT OF STAR
FABRICS, INC.

1 “Defendants”) as for their answer to Plaintiff Star Fabrics, Inc.’s (“Star” or
2 “Plaintiff”) First Amended Complaint (“FAC”), answer as follows:

3 1. Answering ¶1 of the FAC, Defendants admit that this action purports
4 to be an action under the Copyright Act of 1976, Title 17 U.S.C., 101 et seq. and
5 denies the remaining allegations contained therein.

6 2. Answering ¶2 of the FAC, Defendants admit that this Court has
7 federal question jurisdiction under 28 U.S.C. § 1331 and 1338(a) and deny the
8 remaining allegations contained therein.

9 3. Answering ¶3 of the FAC, Defendants admit that venue in this judicial
10 district is proper under 28 U.S.C. 1391(c) and 1400(a) and deny the remaining
11 allegations contained therein.

12 4. Answering ¶4 of the FAC, Defendants are without knowledge or
13 information sufficient to form a belief as to the truth of the allegations contained
14 therein and therefore deny the same.

15 5. Answering ¶5 of the FAC, Mackson admits that it is a corporation
16 existing under the laws of the State of New York, with a principal place of
17 business located at 1407 Broadway, Suite 2116B, New York, New York 10018 and
18 is doing business in the state of California and denies the remaining allegations
19 contained therein.

20 6. Answering ¶5 of the FAC, Zulily is without knowledge or information
21 sufficient to form a belief as to the truth of the allegations contained therein and
22 therefore denies the same.

23 7. Answering ¶5 of the FAC, Burlington is without knowledge or
24 information sufficient to form a belief as to the truth of the allegations contained
25 therein and therefore denies the same.

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1 16. Answering ¶10 of the FAC, each Defendant denies the allegations
2 contained therein as they pertain to it and each Defendant is without knowledge or
3 information sufficient to form a belief as to the truth of the allegations contained
4 therein as they pertain to the other Defendants and therefore denies the same.

5 17. Answering ¶11 of the FAC, Defendants are without knowledge or
6 information sufficient to form a belief as to the truth of the allegations contained
7 therein and therefore deny the same.

8 18. Answering ¶12 of the FAC, Defendants are without knowledge or
9 information sufficient to form a belief as to the truth of the allegations contained
10 therein and therefore deny the same.

11 19. Answering ¶13 of the FAC, Mackson admits that it sold garments
12 featuring a design to Zulily, Burlington and Ross, having pattern No. 7529.
13 Mackson denies that the design is substantially similar to the Subject Design and
14 was without Plaintiff's authorization. Except as so admitted or denied, Mackson is
15 without sufficient knowledge or information to form a belief as to the truth of the
16 remaining allegations contained in Paragraph 13, and on that basis denies each and
17 every remaining allegation.

18 20. Answering ¶13 of the FAC, Zulily admits that it has sold garments
19 under SKU 3835148 and bearing the label "She's Cool" and RN 110724. Zulily
20 denies that it has sold fabric, distributed and/or sold garments featuring a design
21 which is substantially similar to Subject Design without Plaintiff's authorization.
22 Except as so admitted or denied, Zulily is without sufficient knowledge or
23 information to form a belief as to the truth of the remaining allegations contained
24 in Paragraph 13, and on that basis denies each and every remaining allegation.

25 21. Answering ¶13 of the FAC, Burlington admits that it has sold
26 garments under SKU 630-65479773 and bearing the label "She's Cool" and RN
27 110724. Burlington denies that it has sold fabric, distributed and/or sold garments
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1 featuring a design which is substantially similar to Subject Design without
 2 Plaintiff's authorization. Except as so admitted or denied, Burlington is without
 3 sufficient knowledge or information to form a belief as to the truth of the
 4 remaining allegations contained in Paragraph 13, and on that basis denies each and
 5 every remaining allegation.

6 22. Answering ¶14 of the FAC, each Defendant admits that an exemplar
 7 of the Subject Product is shown and each Defendant is without knowledge or
 8 information sufficient to form a belief as to the truth of the allegations contained
 9 therein as they pertain to the Subject Design and as to the other Defendants and
 10 therefore denies the same.

11 **FIRST CLAIM FOR RELIEF**

12 23. Answering ¶15 of the FAC, Defendants repeat, reallege and
 13 incorporate herein by reference as through fully set forth their respective answers
 14 to the preceding paragraphs as if set forth herein verbatim.

15 24. Answering ¶16 of the FAC, each Defendant denies the allegations
 16 contained therein as they pertain to it and each Defendant is without knowledge or
 17 information sufficient to form a belief as to the truth of the allegations contained
 18 therein as they pertain to the other Defendants and therefore denies the same.

19 25. Answering ¶17 of the FAC, Mackson admits that it is a garment
 20 vendor and that it supplied garments composed of fabric having a print design to
 21 Zulily and Burlington and denies the remaining allegations contained therein that
 22 pertain to Mackson and is without knowledge or information sufficient to form a
 23 belief as to the truth of the allegations as they pertain to the other Defendants and
 24 therefore denies the same.

25 26. Answering ¶17 of the FAC, Zulily admits that Mackson is a garment
 26 vendor and that Mackson supplied garments composed of fabric having a print
 27 design to it and denies the remaining allegations contained therein that pertain to
 28 DEFENDANTS MACKSON, INC.'S, ZULILY, ELO'S AND BURLINGTON COAT
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1 Zulily and is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations as they pertain to the other Defendants and therefore denies
3 the same.

4 27. Answering ¶17 of the FAC, Burlington admits that Mackson is a
5 garment vendor and that Mackson supplied garments composed of fabric having a
6 print design to it and denies the remaining allegations contained therein that pertain
7 to Burlington and is without knowledge or information sufficient to form a belief
8 as to the truth of the allegations as they pertain to the other Defendants and
9 therefore denies the same.

10 28. Answering ¶¶18, 19, 20, and 21 of the FAC, each Defendant denies
11 the allegations contained therein as they pertain to it and each Defendant is without
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations contained therein as they pertain to the other Defendants and therefore
14 denies the same.

15 29. Defendants deny that Plaintiff is entitled to any of the relief set forth
16 therein.

17 **FIRST AFFIRMATIVE DEFENSE**

18 30. Plaintiff's claims are barred, in whole or in part, because they fail to
19 state a claim upon which relief may be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 31. Plaintiff is barred from seeking the relief requested in the FAC, in
22 whole or in part, because Plaintiff does not possess a valid copyright registration
23 for the Subject Design.

24 **THIRD AFFIRMATIVE DEFENSE**

25 32. On information and belief, Plaintiff is barred from seeking the relief
26 requested in the FAC, in whole or in part, because Plaintiff abandoned its
27 copyrights by providing the Subject Design to entities with the desire and
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1 expectation that the Subject Design would be copied and by permitting and
2 allowing the Subject Design to be copied without taking any measures to prevent
3 copying or otherwise protect its purported copyrights.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 33. On information and belief, Plaintiff is barred from seeking the relief
6 requested in the FAC, in whole or in part, because Plaintiff consented and
7 acquiesced to any copying by purposefully providing its designs to entities with the
8 desire and expectation that those designs would then be copied without its express
9 permission.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 34. Plaintiff is barred from seeking the relief requested in the FAC, in
12 whole or in part, because Defendants did not infringe the Subject Design.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 35. On information and belief, the Subject Design is in the public domain.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 36. None of the elements of the Subject Design are copyrightable either
17 separately or together.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 37. The Subject Design lacks the originality necessary to make it
20 protectable under the Copyright Laws of the United States.

21 **NINTH AFFIRMATIVE DEFENSE**

22 38. On information and belief, Plaintiff is not the true and correct owner
23 of the Subject Design.

24 **TENTH AFFIRMATIVE DEFENSE**

25 39. Blue Studio is not the true and correct author of the Subject Design.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

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1 44. WHEREFORE Defendants pray for judgment as follows:

2 1) Plaintiff take nothing by way of its First Amended Complaint on
3 file herein.

4 2) For cost of suit.

5 3) For reasonable attorneys' fees as permitted by law.

6 4) For such other and further relief as the Court deems just and proper.

7
8 Dated: January 8, 2016

9 */s/Alan M. Klein*

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16 Attorney for Defendants
17 Mackson, Inc., Zulily, LLC and
18 Burlington Coat Factory Direct Corp.

19
20 **DEMAND FOR JURY**

21 Defendants hereby demand a trial by jury of all claims so triable.

22 Dated: January 8, 2016

23 */s/Alan M. Klein*

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